

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: David Ferris	Team: Team # 6	CCRB Case #: 200704280	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/27/2007 11:00 PM	Location of Incident: § 87(2)(b)	Precinct: 67	18 Mo. SOL 9/27/2008	EO SOL 9/27/2008	
Date/Time CV Reported Tue, 03/27/2007 11:24 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 03/27/2007 11:24 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Martinez	20291	922716	PBBS TF
2. POM Terrence Cane	29622	922068	PBBS TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Martinez	Abuse: PO Robert Martinez questioned § 87(2)(b)	§ 87(2)(b)
B.POM Robert Martinez	Abuse: PO Robert Martinez threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
C.POM Robert Martinez	Abuse: PO Robert Martinez stopped § 87(2)(b)	§ 87(2)(b)
D.POM Robert Martinez	Force: PO Robert Martinez used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Terrence Cane	Force: PO Terrence Cane used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Terrence Cane	Abuse: PO Terrence Cane frisked § 87(2)(b)	§ 87(2)(b)
G.POM Terrence Cane	Abuse: PO Terrence Cane searched § 87(2)(b)	§ 87(2)(b)

Synopsis

On March 27, 2007, § 87(2)(b) was outside his home at § 87(2)(b) in Brooklyn when PO Robert Martinez and PO Terence Cane, passing by in an unmarked car, observed § 87(2)(b) on the edge of the property watching people walking on Church Avenue. They made a U-turn and came back toward § 87(2)(b) at which point § 87(2)(b) turned around and walked toward the back of the house. PO Martinez and PO Cane exited the vehicle and followed. PO Martinez asked what he was doing there and told § 87(2)(b) to stop, which he refused (Allegation A). PO Martinez allegedly stated, “Stop or I’ll put a bullet in your head” (Allegation B). PO Martinez then decided to effect a level-three stop as § 87(2)(b) continued walking toward the rear of the house, where he descended an exterior staircase to the basement door (Allegation C). Upon reaching him at the bottom of the stairwell, PO Martinez and PO Cane allegedly used physical force to subdue § 87(2)(b) (Allegations D and E). Then, PO Cane performed a frisk of § 87(2)(b) (Allegation F) and allegedly searched his pockets (Allegation G). Several members of § 87(2)(b)’s family came out of the house to observe the situation. The officers then departed the scene without issuing a summons or making an arrest.

§ 87(2)(g)
[REDACTED]

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old black male, 6’1”, 150 pounds, with black hair and brown eyes. He filed a CCRB complaint via the call processing system on March 27, 2007 (encl. 7a-7c). On April 2, 2007, § 87(2)(b) was interviewed at the CCRB and provided the following statement (encl. 8a-8e). § 87(2)(b) owns and resides in a private home at § 87(2)(b). Three families currently reside in the house. There is a set of exterior stairs leading directly downstairs from the driveway to the basement laundry room. § 87(2)(b) occupies the basement. On March 27, 2007, around 11:00pm, in the vicinity of § 87(2)(b) § 87(2)(b) was taking the garbage out to the curb. He was wearing a sweater and denim shorts that went down to the knee.

He was standing in the driveway when he saw an unmarked, grey sedan (possibly a Chevrolet or Chrysler) drive by slowly. He saw the officers looking at him. § 87(2)(b) believed, but was not sure, that the officers saw him see their car and react. § 87(2)(b) suspected that the police were going to stop him, since he has been stopped and frisked on the street before without cause, so he turned around and slowly headed toward the backyard to turn off the light and go upstairs.

As § 87(2)(b) began slowly walking toward the back of the house, PO1 and PO2 approached him on foot and asked what he was doing there. § 87(2)(b) provided PO1’s name to the CCRB as PO Martinez, and the investigation later determined PO2 to be PO Cane.) § 87(2)(b) stated without stopping that he lived there. An officer said, “Stop or I’ll put a fucking bullet in your head.” § 87(2)(b) was not sure which officer said that, though the investigation later determined it was PO Martinez. They asked him for ID and he said that he did not have any on him. The officers asked where he was going and told him to stop. At no point did the officers tell him why he was being stopped.

§ 87(2)(b) turned the corner around the house and went down the stairs toward the laundry room. He shouted “Ma, ma!” in order to alert the attention of his mother, § 87(2)(b) who was inside the house. PO Martinez and PO Cane followed him down the stairs and caught up with him. At that point, § 87(2)(b) had his keys out and was slowly trying to open the door to the laundry room. PO Martinez pushed him against the wall, using one hand to push § 87(2)(b)’s right shoulder. PO Cane pushed § 87(2)(b)’s right arm toward the wall, striking the wrist against the wall and causing a very small laceration. PO Cane held § 87(2)(b)’s hand against the wall. PO Martinez asked him what he had in his pockets. § 87(2)(b) stated that he did not have anything. PO Martinez asked him for ID, and § 87(2)(b) again stated that he

had no ID but that he lives upstairs and could call his mother to confirm that. § 87(2)(b) continued to shout to his mother so that she would come downstairs. § 87(2)(b) was upset and was purposefully being loud so that his mother could be alerted.

PO Martinez pressed his forearm against § 87(2)(b)'s chest to hold him against the wall. The act did not constrict § 87(2)(b)'s breathing. Right before PO Martinez placed his forearm against § 87(2)(b), § 87(2)(b) was not doing anything besides attempting to enter the house. § 87(2)(b) had his back against the wall. He held his forearm against § 87(2)(b) in that position for less than a minute. Meanwhile, PO Cane searched his pants pockets and inside his waistband. § 87(2)(b) resisted the efforts of PO Cane to place his hands in his pockets and attempted to move PO Martinez's arm away. § 87(2)(b) had nothing in his pockets at the time. During the search, § 87(2)(b) continued to shout to his mother to come downstairs, and the officers told him to shut up. They asked what was in his hand. He was still holding his cell phone at this point. The cell phone light was on.

At that point, § 87(2)(b) exited the house, followed shortly thereafter by § 87(2)(b) (§ 87(2)(b)'s sister) and § 87(2)(b). § 87(2)(b) came down the stairs while PO Cane was still searching § 87(2)(b) at which point, the officer let go of § 87(2)(b). The officers asked § 87(2)(b)'s mother if she knew § 87(2)(b) and if he did in fact live there. § 87(2)(b) attempted to calm down § 87(2)(b) who was complaining about the situation and said that he did not do anything.

The neighbors who live in the same house also opened their door and observed the situation from inside. § 87(2)(b) did not believe that the neighbors saw the officers use force against or search § 87(2)(b).

After PO Martinez released § 87(2)(b) two to three minutes later, § 87(2)(b) and § 87(2)(b) engaged in a brief verbal altercation in which § 87(2)(b) complained that his mother was yelling at § 87(2)(b).

The officers left without issuing a summons or making an arrest.

Although § 87(2)(b) alleged that he sustained minor bruising and a small cut to his hand, he did not seek medical treatment. His injuries were not photographically documented.

Results of Investigation

Civilian statement: § 87(2)(b) (witness)

§ 87(2)(b) is a § 87(2)(b)-old black male. On May 30, 2007, he was interviewed at his job site at § 87(2)(b) and provided the following statement (encl. 9a-9c). On March 27, 2007, § 87(2)(b) was lying in his bed on the third floor of his home at § 87(2)(b) when he heard his cousin, § 87(2)(b) outside screaming, "Mom! Mom!" § 87(2)(b) looked outside his window and saw an individual struggling with § 87(2)(b). § 87(2)(b) did not realize the individual was a police officer.

§ 87(2)(b) ran outside to the back of the house and saw two officers, identified in the investigation as PO Martinez and PO Cane. Both were males in uniform. PO Martinez had pinned § 87(2)(b) against the wall at the bottom of the exterior staircase and PO Cane was standing at the top of the stairs. § 87(2)(b)'s back was to the wall, and he was screaming, "Let me go, let me go!" § 87(2)(b) also saw § 87(2)(b)'s sister, § 87(2)(b) who was pleading with the officers to let § 87(2)(b) go and telling them that § 87(2)(b) lived in that house. § 87(2)(b) was standing between § 87(2)(b) and PO Cane. Another cousin, who § 87(2)(b) knows only as "Cousin § 87(2)(b)" was standing within the house looking out a window and telling the officers that the house belonged to § 87(2)(b).

PO Martinez asked § 87(2)(b) for his ID. § 87(2)(b) continued to struggle with PO Martinez and urged the officer to set him free. § 87(2)(b) explained the act of "struggling" as a physical attempt by PO Martinez to hold § 87(2)(b) while § 87(2)(b) attempted to break free. PO Martinez had both his hands on § 87(2)(b) as he tried to hold § 87(2)(b) against the wall. § 87(2)(b) did not attempt to push PO Martinez. § 87(2)(b) and § 87(2)(b) repeatedly told the officer, "Let him go, let him go, that's his house." Meanwhile, PO Cane stood near the top of the stairs. § 87(2)(b) did not see either officer frisk or search § 87(2)(b).

After five to seven minutes, PO Cane, still standing on top of the stairwell, told PO Martinez to release § 87(2)(b). PO Martinez explained to § 87(2)(b) that there were a number of reports of robberies in the neighborhood, and when the officers passed by in their vehicle, they saw § 87(2)(b).

standing in the driveway with a cell phone in hand. When they exited the car, they observed § 87(2)(b) turn around and walk toward the back of the house.

§ 87(2)(b) asked both officers for their name and shield number. PO Cane cooperated, and PO Martinez said something to the effect of, "You can take down my badge number. I'm not scared of anything." Because he was climbing the stairs at the time, his back was to § 87(2)(b) and he did not turn to reveal his shield.

At no point did § 87(2)(b) did either officer use any profanity or threaten to use force, or see PO Cane make physical contact with § 87(2)(b).

Attempts to locate additional witnesses:

Known witnesses besides § 87(2)(b) included § 87(2)(b) and "cousin § 87(2)(b). The investigator obtained contact information for § 87(2)(b) and § 87(2)(b) and made numerous attempts via telephone and mail to contact them, but none was willing to come to the CCRB for an interview. § 87(2)(b) provided a brief but unofficial statement over the phone, § 87(2)(g).

§ 87(2)(b) In summary, she explained that, as the last witness to exit the house, her presence was brief and largely confined to a discussion with § 87(2)(b). At that point, the officers had already released him.

Subject officer statement: PO Robert Martinez

PO Martinez is a § 87(2)(b)-old Hispanic male, 6'1", 205 pounds, with brown hair and hazel eyes. He had no entries in his memo book regarding the interaction with § 87(2)(b) (encl. 12a-12b). He did, however, fill out a UF250 (encl. 13a), which stated that an unidentified person (determined to be § 87(2)(b) was stopped because of actions indicative of acting as a lookout and due to an "ongoing investigation." The report indicated that § 87(2)(b) was frisked because of "furtive movements" and "failure to comply with officer's directions."

PO Martinez was interviewed at the CCRB on June 28, 2007 and provided the following statement (encl. 14a-14b). On March 27, 2007, PO Martinez worked a tour of duty from 8:00pm to 4:30am, assigned to auto larceny in the 67th precinct with PO Terence Cane. He was in uniform and assigned to RMP § 87(2)(b) an unmarked vehicle, which was driven by PO Cane. Around 11:00pm, while PO Cane was driving slowly along Church Avenue in Brooklyn, PO Martinez observed § 87(2)(b) leaning against a wall near what appeared to be a new apartment building or commercial building at § 87(2)(b). PO Martinez did not know § 87(2)(b) was a private home.

§ 87(2)(b) was looking at people up and down the street. PO Martinez saw § 87(2)(b) look at four or five people in that manner. He observed § 87(2)(b) for several minutes before deciding to stop him. PO Martinez wondered if § 87(2)(b)'s behavior was indicative of planning a robbery since he seemed to be casing people. There is a lot of gun violence in that area. When the officers made a U-turn in their vehicle and returned to the property, § 87(2)(b) looked at the officers and turned and walked away. PO Martinez stated that in his experience, this constitutes suspicious behavior. Before § 87(2)(b) turned to leave, PO Martinez only intended to ask him if he lived there. PO Martinez did not recall whether he or his partner made the decision to question and stop § 87(2)(b).

PO Cane stopped the vehicle directly in front of § 87(2)(b) on the street. When the officers exited the vehicle, they were approximately 15 feet from § 87(2)(b) who was walking quickly back toward the house. PO Martinez observed § 87(2)(b) holding his hands around his waist area rather than at his side. PO Martinez stated, "Police! Hold on a second; I want to talk to you." § 87(2)(b) did not stop, and PO Martinez continued to call out to § 87(2)(b). § 87(2)(b) did not make any threatening gestures but held his hands in a way that prevented the officers from seeing if he was holding something. The officers pursued § 87(2)(b) across the property.

When § 87(2)(b) reached the corner of the building, he turned right and headed down an exterior staircase toward the basement. PO Martinez and PO Cane followed him around the corner and down the stairs. § 87(2)(b) pointed the object which PO Martinez observed to be a cell phone at PO Martinez. § 87(2)(b) "went crazy" by cursing, flailing his arms, and yelling for his mother.

Near the bottom of the stairwell, PO Martinez grabbed § 87(2)(b)'s wrist to prevent § 87(2)(b) from making contact with the officer as he flailed his arms. PO Martinez did not recall if PO Cane placed his hands on § 87(2)(b). PO Martinez then frisked § 87(2)(b) including a pat-down of the waistband area. PO Martinez did not search him. § 87(2)(b) attempted to push the officer's hands away to resist

being frisked. PO Martinez did not find anything as a result of the frisk. § 87(2)(b) was only in possession of a cell phone and a set of keys. PO Martinez did not recall if PO Cane also frisked § 87(2)(b).

At no point did either officer use any discourteous language.

§ 87(2)(b) asked the officers for their shield numbers and they complied. PO Martinez spoke to § 87(2)(b)'s sister and explained why they stopped § 87(2)(b).

PO Martinez was asked to address the “ongoing investigation” that he noted in the UF250. He could not recall to what he was referring.

Subject officer statement: PO Terrence Cane

PO Terrence Cane is a § 87(2)(b)-old white male, 6’3”, 225 pounds, with brown hair and brown eyes. He had no entries in his memo book related to this incident (encl. 10a-10c). He was interviewed at the CCRB on July 12, 2007 and provided the following statement (encl. 11a-11b). On March 27, 2007, PO Cane worked from 8:00pm to 4:30am the next morning, assigned to the auto larceny unit in the 67th Precinct. He was working with PO Robert Martinez. The officers were on that assignment because of a spike in crime in that precinct. PO Cane did not record the incident with § 87(2)(b) in his memo book.

Around 11:00pm, PO Cane and PO Martinez were driving east-bound on Church Avenue in Brooklyn when PO Cane observed § 87(2)(b) standing in front of a long brick wall watching people walking along the street. Church Avenue is a high-crime area. The street was not busy but there was still foot traffic. For about one minute, PO Cane observed § 87(2)(b) standing along a long brick wall and looking at what people on Church Avenue were doing and where they were going. Based on this behavior and § 87(2)(b)'s position near the wall (which indicated he may have been hiding), it appeared that he may have been preparing to rob somebody. PO Cane made a U-turn to turn the vehicle around, and as he was doing so, § 87(2)(b) looked at the officers and began to walk away from the wall down the driveway of § 87(2)(b). At the time, PO Cane did not realize it was a residential property.

PO Cane stopped the vehicle and PO Martinez exited and pursued § 87(2)(b) down the driveway. By the time PO Cane placed the car in park and followed, he was some distance behind his partner. PO Cane heard PO Martinez identify himself as an officer and tell § 87(2)(b) to stop at least two times. PO Cane did not hear PO Martinez threaten to shoot § 87(2)(b) or say anything to that effect. § 87(2)(b) did not comply with the order to stop and continued walking. § 87(2)(b) holding his hands at his sides around his torso area, turned around the corner of the building and went down an exterior stairwell. PO Martinez followed § 87(2)(b) to the bottom, and PO Cane caught up shortly thereafter.

When PO Cane reached the bottom, he noticed that § 87(2)(b) was carrying a cell phone and was flailing his arms by swinging them up, down, and around. § 87(2)(b) did not attempt to strike either officer. PO Cane wanted to verify that § 87(2)(b) did not have any weapons in his waistband, so he frisked the front of his waist. When asked if § 87(2)(b) was compliant with PO Cane’s attempt to frisk him, PO Cane stated that PO Cane “kind of snuck it in there,” performing it quickly. PO Cane did not have any other physical contact with him. He did not search § 87(2)(b)'s pockets and did not see PO Martinez search his pockets. § 87(2)(b) began screaming and calling for his mother. Then, several people (PO Cane could not recall the specific number) came out of the house and began coming down the stairs. Fearing that the officers would be trapped in the stairwell, PO Cane went back up the stairs and encountered the other people.

PO Cane explained the situation and asked if they knew § 87(2)(b). They explained that § 87(2)(b) lives at § 87(2)(b). At that point, both PO Cane and PO Martinez came out from the stairwell. § 87(2)(b) continued to shout, but PO Cane determined that § 87(2)(b) was not engaged in criminal activity, so the officers decided to leave.

As they were leaving, several more people approached the officers and asked for their names and shield numbers. Both PO Cane and PO Martinez complied. Then they left the scene in their RMP.

Police documents:

The roll call for the Auto Larceny Unit of the Patrol Borough Brooklyn South Task Force lists PO Martinez and PO Cane as present for duty during the time of the incident (encl. 15a). The aforementioned stop and frisk report filed by PO Martinez states that § 87(2)(b) was stopped for engaging in “actions indicative of acting as a lookout,” an “ongoing investigation,” and “changing directions at the sight of an

officer,” and frisked due to “furtive movements” and a “refusal to comply with officers’ directions.” The report states that § 87(2)(b) was not searched (encl. 13a).

CCRB history:

§ 87(2)(b) has not previously filed a CCRB complaint (encl. 6a). PO Martinez has one substantiated discourtesy allegation in his nine years of service, for which he received a command discipline (encl. 4a-4b). PO Cane has no substantiated CCRB allegations during his nine-year tenure (encl. 5a-5b).

Criminal conviction history:

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)

Conclusions and Recommendations

Officer identification:

PO Martinez’s identity was initially reported by § 87(2)(b) upon filing the complaint after he obtained his name and shield number on the scene. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g) PO Cane was subsequently identified based on the Patrol Borough Brooklyn South auto larceny roll call (encl. 15a), which recorded that PO Cane and PO Martinez were working together.

Undisputed facts:

It is undisputed that § 87(2)(b) fled at the sight of the officers, who pursued him and frisked him at the bottom of the exterior stairwell.

Disputed facts:

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Assessment of evidence:

§ 87(2)(g)
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Allegation A: PO Robert Martinez questioned § 87(2)(b)

The officers testified that they initially decided to question § 87(2)(b) based on two factors: that § 87(2)(b) was standing at the edge of the property looking at people walking on Church Avenue and that there is a high incidence of robberies in that area. PO Martinez then attempted to question § 87(2)(b) under a level-one encounter according to the *DeBour* standard (encl. 2a-2b).

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§ 87(2)(g) “If innocuous behavior is found to have occurred in a *high crime area*, that fact alone will *not* provide the officer with a reasonable suspicion that the defendant is committing a crime,” according to Barry Kamins, referencing *In re James R* (encl. 2a-2e). § 87(2)(g) *People v. Howard*, in which a defendant was stopped after officers observed him standing in a robbery-prone area looking at people coming out of a train station for two to three minutes, during which time he twice placed his right hand inside his jacket as if he were adjusting something. The Appellate Division, First Department invalidated the stop on the basis that “there was absolutely no objective indication that criminal activity was afoot or that defendant was engaged in criminal activity. A citizen is certainly entitled to stand and look about for two or three minutes on a street corner in any neighborhood and be free from arbitrary police encounters” (encl. 2f-2m).

§ 87(2)(g)

§ 87(2)(g)

Allegation B: PO Robert Martinez threatened § 87(2)(b) with the use of force.

At the time of the alleged threat, only PO Martinez, PO Cane, and § 87(2)(b) were present. Both officers denied using or hearing such a threat. § 87(2)(g)

Allegation C: PO Robert Martinez stopped § 87(2)(b)

In response to PO Martinez’s approach, § 87(2)(b) fled to the rear of the house, precipitating the officer’s pursuit. PO Martinez testified that § 87(2)(b)’s deliberate evasion of the officers’ approach escalated the level of suspicion from a level-one to a level-three encounter in which PO Martinez attempted to effect a stop. § 87(2)(g)

According to Kamins, “where the police approach merely to request information, there need be *no* indication of criminal activity; a citizen’s flight will therefore *not* elevate the encounter to a point at which pursuit by the police would be justified” (encl. 2a-2e). § 87(2)(g)

§ 87(2)(g)

Allegation D: PO Robert Martinez used physical force against § 87(2)(b)

Allegation E: PO Terrence Cane used physical force against § 87(2)(b)

§ 87(2)(b) PO Martinez, and PO Cane all testified to § 87(2)(b)’s physical resistance to the frisk performed at the bottom of the stairwell. § 87(2)(b) did not attempt to strike an officer but did, according to the officers, flail his arms and did, according to the witness, try to push the officers’ hands away and break free of their grip. § 87(2)(g)

Because that force conformed to the standards of Patrol Guide procedure 208-11 (encl. 1a) which prescribes the minimum

§ 87(2)(g)

Allegation F: PO Terrence Cane frisked § 87(2)(b)

According to the standard enumerated *NYPD v. Burke*, a frisk may only be conducted when an officer 1) reasonably fears for his safety and 2) has reasonable suspicion that a suspect is committing a crime (encl. 3a-3c). PO Martinez and PO Cane insisted that § 87(2)(b) based on the unseen and awkward position of his hands around his waist and the possession of a small, unidentified object in his hand (the cell phone), may have been carrying a weapon. However, after PO Cane determined the object was a cell phone, he still proceeded to frisk him. § 87(2)(g)

§ 87(2)(g) In the DCT case *NYPD v. Burke*, the court found an officer guilty of an improper frisk in part because that officer could not persuade the court that he was in danger of physical injury “simply because people in the lobby turned their backs to him as he entered the lobby and one reached into his waist area” (encl. 3a-3c). § 87(2)(g)

Allegation G: PO Terrence Cane searched § 87(2)(b)

PO Cane admitted to searching around § 87(2)(b)'s waistband but not inside his pockets. No witness supported § 87(2)(b)'s claim that PO Cane performed a search of his person; § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: